

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Norfolk Division

-----x  
ePLUS INC., )  
Plaintiff, ) Civil Action No.  
v. ) 3:09-CV-620 (REP)  
LAWSON SOFTWARE, INC., )  
Defendant. )  
-----x

CONFIDENTIAL - SOURCE CODE

Videotaped Deposition of BENJAMIN F. GOLDBERG, Ph.D.

Washington, DC

Thursday, February 2, 2012

9:01 a.m.

Job No.: 17583

Pages: 1 - 214

Reported by: Lee Bursten, RPR, CRR

EXHIBIT

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CONFIDENTIAL VIDEOTAPED DEPOSITION OF BENJAMIN F. GOLDBERG, PH.D.  
CONDUCTED ON THURSDAY, FEBRUARY 2, 2012

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1	Q	Are you aware of any bases for your	10:40:11
2		opinions as to colorable differences that are not	10:40:14
3		found within interrogatory -- Lawson's answer to	10:40:19
4		interrogatory number 5?	10:40:24
5	MR. LO:	Objection, vague.	10:40:25
6	A	Without going through paragraph by	10:40:29
7		paragraph of the rog response and of my report and	10:40:34
8		comparing them, I couldn't give you an answer.	10:40:42
9	BY MS. ALBERT:		10:40:49
10	Q	Are you aware of any additional opinions as	10:40:50
11		to noninfringement that you rendered that are not	10:40:53
12		found within the scope of Lawson's supplemental	10:40:58
13		answer to interrogatory number 5?	10:41:03
14	A	Again, without going through line by line,	10:41:06
15		sitting here, I don't know the answer to that.	10:41:09
16	Q	Did you understand that the Court ordered	10:41:14
17		that your opinions were to be confined to the factual	10:41:17
18		bases and contentions set forth in that interrogatory	10:41:19
19		answer?	10:41:23
20	MR. LO:	Objection. Lacks foundation.	10:41:28
21		Vague.	10:41:30
22	A	What I understood was that Lawson	10:41:33

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1 identified three major changes that it made in its 10:41:38  
2 rog response. And those were the changes that I was 10:41:43  
3 supposed to consider. And that's what I did. 10:41:49

4 BY MS. ALBERT: 10:41:53

5 Q So you did not attempt to confine yourself 10:41:53  
6 to the factual bases and contentions that were set 10:41:57  
7 forth in Lawson's supplemental answer to ePlus's 10:42:00  
8 interrogatory number 5? 10:42:04

9 MR. LO: Objection, asked and answered. 10:42:05  
10 Also misstates the testimony. 10:42:07

11 A Well, the factual basis was the changes 10:42:08  
12 made to the Lawson system. And those are the changes 10:42:14  
13 that I considered. I did not consider as part of my 10:42:21  
14 analysis other changes that were made, but were not 10:42:27  
15 the subject of the discussion in the interrogatory 10:42:34  
16 response. 10:42:37

17 BY MS. ALBERT: 10:42:41

18 Q So I don't know that that answered my 10:42:41  
19 question of whether you attempted to confine yourself 10:42:44  
20 in your opinions to the factual bases and contentions 10:42:50  
21 that were set forth in Lawson's supplemental answer 10:42:53  
22 to ePlus's interrogatory number 5. 10:42:57

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1	the class level of the UNSPSC code does not enable a	11:54:15
2	user to find substitutable goods because the user	11:54:19
3	must manually review the search results and determine	11:54:23
4	for himself which of the search results satisfies his	11:54:26
5	needs?	11:54:28
6	MR. LO: Objection, vague. Misstates.	11:54:31
7	A Can you read it back, please.	11:54:39
8	(Requested portion of record read.)	11:54:44
9	A So my opinion is that since the RQC	11:55:14
10	interface will display all the items of a class which	11:55:25
11	may be substantially different from each other and	11:55:34
12	requires the user to try to figure out without the	11:55:37
13	benefit of the UNSPSC commodity code which of those	11:55:41
14	items may or may not be substitutable, I don't	11:55:47
15	believe that that satisfies the converting element of	11:55:56
16	the claims.	11:56:03
17	BY MS. ALBERT:	11:56:04
18	Q Where in the Court's construction of the	11:56:05
19	converting data elements did the Court indicate that	11:56:09
20	the system had to perform the converting data	11:56:14
21	function without any user intervention?	11:56:17
22	A Oh, I certainly did not say that. I	11:56:23

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1 believe Mr. Weaver misunderstood what I said in my 11:56:28  
2 report. I think maybe you share the misconception. 11:56:32  
3 It is clear that based on what occurred at trial, 11:56:39  
4 that the converting means may include the user 11:56:48  
5 selecting an item, putting the item -- well, in the 11:57:02  
6 RSS case, into the Shopping Cart, then choosing an 11:57:08  
7 equivalent item with the same commodity code, putting 11:57:14  
8 that item into the Shopping Cart of RSS, and removing 11:57:17  
9 the first one; since the jury found a system of that 11:57:22  
10 capability to infringe, I'm certainly not saying that 11:57:31  
11 no user intervention is required. 11:57:33  
12 So that's just a misstatement of my 11:57:39  
13 opinion. 11:57:42  
14 Q Well, do you understand that Lawson's 11:57:42  
15 expert at trial also rendered an opinion that the RSS 11:57:44  
16 system couldn't perform converting data functionality 11:57:52  
17 without the user being required to sift through the 11:57:59  
18 search results to determine whether the items were 11:58:03  
19 substitutable? 11:58:06  
20 MR. LO: Objection, lacks foundation. 11:58:07  
21 A As you know, I was asked to assume that the 11:58:12  
22 jury's verdict was correct, and therefore, since 11:58:17

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1	A	No. Meaning that the system -- well, going	13:46:51
2		back to the claims now, a system that -- a system	13:47:01
3		could not get out of infringement by simply allowing	13:47:10
4		the user to select and search one catalog.	13:47:13
5	Q	Well --	13:47:20
6	A	However --	13:47:20
7	Q	Okay. Excuse me.	13:47:22
8	A	However, the system of the claimed	13:47:24
9		invention must allow a user, if he so chooses, to be	13:47:30
10		able to search among multiple catalogs and -- well,	13:47:38
11		select among multiple catalogs, and if the user so	13:47:45
12		chooses, to select and search among multiple	13:47:50
13		catalogs, put those items into a single requisition.	13:47:54
14	Q	If the '683 patent claims do not require	13:48:04
15		that the system allow the user to search, to select	13:48:11
16		among multiple product catalogs and then search among	13:48:17
17		the multiple product catalogs, then you would have no	13:48:22
18		noninfringement opinion, correct?	13:48:27
19	MR. LO:	Objection, misstates. Also vague.	13:48:29
20	A	If the user can never select more than one	13:48:35
21		catalog to search, such that the items that the user	13:48:44
22		chooses goes onto a single requisition, then I don't	13:48:55

CONFIDENTIAL VIDEOTAPED DEPOSITION OF BENJAMIN F. GOLDBERG, PH.D.  
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1 15:43.

15:43:31

2 (Recess.)

15:47:00

3 THE VIDEOGRAPHER: We are back on the  
4 record at 15:47.

15:47:01

15:47:17

5 MR. LO: So we have no questions on behalf  
6 of Lawson. So subject to our request that the depo  
7 be marked as confidential source code, we have  
8 nothing further.

15:47:20

15:47:21

15:47:26

15:47:30

9 MS. ALBERT: Thank you for your time,  
10 Dr. Goldberg.

15:47:31

15:47:33

11 THE VIDEOGRAPHER: This ends the deposition  
12 of Benjamin F. Goldberg, Ph.D. We are off the record  
13 at 15:47.

15:47:33

15:47:35

15:47:39

14 (Signature having not been waived, the  
15 videotaped deposition of BENJAMIN F. GOLDBERG, Ph.D.  
16 was concluded at 3:47 p.m.)

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ACKNOWLEDGMENT OF DEPONENT

I, BENJAMIN F. GOLDBERG, Ph.D. , do hereby  
acknowledge that I have read and examined the  
foregoing testimony, and the same is a true, correct  
and complete transcription of the testimony given by  
me and any corrections appear on the attached Errata  
sheet signed by me.

(DATE)

(SIGNATURE)



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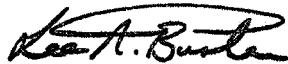
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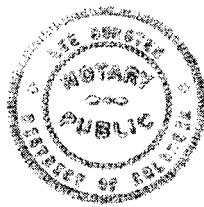
CERTIFICATE OF SHORTHAND REPORTER-NOTARY PUBLIC

I, Lee Bursten, the officer before whom the foregoing deposition was taken, do hereby certify that the foregoing transcript is a true and correct record of the testimony given; that said testimony was taken by me stenographically and thereafter reduced to typewriting under my direction; and that I am neither counsel for, related to, nor employed by any of the parties to this case and have no interest, financial or otherwise, in its outcome.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal this 3rd day of February, 2012.

My commission expires June 30, 2014.





NOTARY PUBLIC IN AND FOR  
THE DISTRICT OF COLUMBIA

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA**  
Richmond Division

ePLUS INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 3:09CV620 (REP)
	)	
LAWSON SOFTWARE, INC.,	)	
	)	
	)	
Defendant.	)	

**DECLARATION OF JASON C. LO IN SUPPORT OF  
DEFENDANT LAWSON SOFTWARE, INC.'S MEMORANDUM IN OPPOSITION TO  
EPLUS'S MOTION TO EXCLUDE PORTIONS OF LAWSON'S EXPERT TESTIMONY**

I, Jason C. Lo, declare as follows:

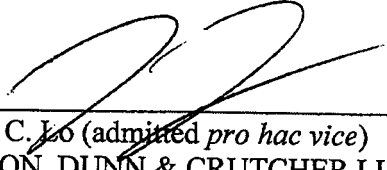
1. I am a member of the bar of the State of California and a partner at the law firm of Gibson, Dunn & Crutcher LLP, counsel to Lawson Software, Inc. ("Defendant" or "Lawson") in the above-captioned action. I submit this declaration in support of Defendant's Memorandum in Opposition to ePlus's Motion to Exclude Portions of Lawson's Expert Testimony.
2. Attached at Exhibit 1 is a true and correct copy of Defendant Lawson Software, Inc.'s Responsive Claim Construction Brief.
3. Attached at Exhibit 9 is a true and correct copy of a letter sent from Daniel McDonald of Merchant & Gould to Scott Robertson of Goodwin Procter regarding Lawson's release of RQC.
4. Attached at Exhibit 10 is a true and correct copy of relevant portions of the transcript of Dr. Alfred C. Weaver's February 9, 2012 deposition.
5. Attached at Exhibit 11 is a true and correct copy of Plaintiff ePlus Inc.'s First Set of Interrogatories to Defendant Lawson Software, Inc. for Contempt Proceedings.

6. Attached at Exhibit 12 is a true and correct copy of the relevant portions of the transcript of Dr. Benjamin Goldberg's February 2, 2012 deposition.

I hereby declare, under penalty of perjury that the foregoing is true and correct.

Respectfully submitted,

Dated: February 15, 2012  
Los Angeles, CA



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Jason C. Lo (admitted *pro hac vice*)  
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